

ORIGINAL

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April 30, 1996

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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APR 30 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: MM Docket No. 96-16  
Streamlining Broadcast EEO Rules and Policies, et al.,  
Informal Comments of Virginia Broadcasting Corporation  
DBMPC #15118

Dear Mr. Caton:

On behalf of Virginia Broadcasting Corporation, (VBC) there is transmitted herewith an original plus five copies (for distribution to the Commissioners) of VBC's Informal Comments in the above-referenced Rule Making proceeding.

Should there be any question regarding the attached Informal Comments, please contact undersigned Counsel for VBC.

Very truly yours,



Denise B. Moline

DBM:wp  
Attachment

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# VIRGINIA BROADCASTING CORPORATION

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Mr. William F. Caton, Acting Secretary  
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1919 M Street, N.W., Room 222  
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Re: MM Docket No. 96-16  
In the Matter of Streamlining Broadcast EEO Rule and Policies et al.,  
Informal Comments of Virginia Broadcasting Corporation

Dear Mr. Caton:

The following are the limited comments of Virginia Broadcasting Corporation in connection with the above-referenced Rule Making Proceeding to revise the FCC's Equal Employment Opportunity Rules and Policies.

## *Background*

Virginia Broadcasting Corporation is the Licensee of a group of three AM/FM combination stations in three small markets in Missouri and Illinois: KLPW AM/FM, Union Missouri; WJBD AM/FM, Salem, Illinois; and WCMY (AM) and WRKX (FM), Ottawa, Illinois. The population in each of these markets is as follows: Union, MO: 6,000; Salem, IL: 7,800; Ottawa, IL: 18,500. The stations in each licensed community are operated as combination stations, and employ a total of 12, 13 and 15 persons at each respective station location.

In two of the markets, Salem and Ottawa, IL, the minority labor work force statistics used are county statistics, and are consistent with the minority work force actually available to the stations. However, in Union MO, the minority labor work force statistics used are those for the St. Louis MSA. Union Missouri is on the western fringe of the St. Louis MSA, and the signals for KLPW AM and FM do not cover the actual metropolitan market. The Franklin County minority labor work force statistics, (the county in which KLPW AM/FM are located) which reflect the *actual* work force from which the KLPW AM/FM employees are drawn, are much lower than the St. Louis MSA work force statistics. As a result of the disparity, KLPW AM/FM were more closely scrutinized during its last renewal cycle, and held to a much higher standard of compliance than are VBC's other stations. As a result, KLPW AM/FM bear a significantly greater burden of compliance and have made serious and extraordinary efforts to recruit minority employees not only from the St. Louis market, but statewide and nationally.

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**WCMY/WRKX**  
Ottawa, IL

**KLPW AM/FM**  
Union/Washington, MO

**WJBD AM/FM**  
Salem, IL

**WORD NEWSPAPERS**  
St. Louis, MO

Like VBC's other stations, KLPW AM/FM is a small market operation, with limited management resources to devote to such recruitment efforts. As a practical matter, no one from the St. Louis market wishes to commute to Union to work there for lower wages than are available in the metro market, and potential minority employees have not been interested in working at a radio station with a country format, when stations with minority-oriented formats exist in St. Louis. There is no public transportation between St. Louis and Union, and despite the existence of reasonably good roads for transportation, Union is simply considered to be too far and too small to commute.

*1. Stations in Small Markets of 25,000 Persons or Less Should be Exempt from the Paperwork Burden of Documenting Compliance with Recruitment Requirements.*

VBC submits that small market stations, i.e., stations in markets of 25,000 persons or less, should be exempt from compliance with the paperwork burdens associated with EEO compliance with recruitment requirements. In such markets, population turnover is slow; businesses tend to be small, and long-lived. Not many new families move to such smaller locations, because of the limited business potential and fewer jobs, and retail businesses and other industry tend to be limited. Station employees are generally employed for a longer period of time, and there are less opportunities for hiring and/or recruitment than there are in larger markets. (For example, at WCMY/WRKX, the sales manager has been on staff for some 25 years; the program director has been an employee at the station for nearly 15 years.) New hires are usually a result of word-of-mouth information and recommendations from within the station and nearby community, rather than a result of advertisement and affirmative recruitment outside the community. In addition, there is little in smaller communities to tempt employees to move from larger communities or outside communities, so that even given affirmative recruitment efforts, the new employee who accepts a position at such a station is usually a local resident, rather than a distant resident.

*2. Stations with 10 or Fewer Full-time Employees Should Be Exempt From All EEO Reporting.*

Furthermore, small radio stations, that is, radio stations with 10 or fewer full-time employees on a full-time basis, should be exempt from the Commission's EEO paperwork burdens. It seems axiomatic that of the 10 employees, there are bound to be insufficient management personnel qualified to handle the recruitment and paperwork burden associated with the Commission's EEO standards, and to devote the necessary time to recruitment efforts presently required under the Commission's rules. Such management personnel are busy running the day-to-day operation of the station, and have less time to devote to the necessary paperwork and to affirmative recruitment. Such small stations seldom have enough staff to devote any one person full-time to EEO responsibilities, nor should such responsibilities be left to lower-level staff. Yet another consideration in the small station context is the station's need to hire qualified personnel. Such stations almost never have resources to devote to training inexperienced staff, and potential minority employees seldom have the necessary experience to qualify for available

positions. Where such minority employees exist, they tend to work for larger stations or for stations in larger markets, where wages are higher. It is a fact that larger stations and stations in larger markets simply have a better chance of hiring qualified minority employees than do small stations or small market stations. Accordingly, the Commission's reporting benchmark should be raised from 5 or fewer full-time employees to 10 or fewer full-time employees.

3. *Use Of Alternative Workforce Data Should be More Liberally Permitted.*

VBC also submits that where a radio station is on the fringe of a larger metropolitan market, and where that radio station's signal does not cover any significant portion of the metropolitan community itself, (e.g., less than 10%) that the statistics used to determine the appropriate level of the minority labor workforce be the county statistics, rather than the MSA statistics currently applicable for such stations. Radio stations on the fringes of the metropolitan market often have little in common with the larger market, and potential employees, as noted above, are far less likely to want to commute from the larger to the smaller market to work. This is especially true where the coverage area for the station does not extend to the MSA community. The pertinent area for compliance with EEO standards should be that area consistent with the Station's coverage area.

The Commission should define the relevant market, for EEO purposes, consistently with the station's coverage within the market. In VBC's case, its stations KLPW AM/FM are located in Union Missouri, and its coverage for both stations does not extend past the borders of Franklin County. The minority population in Franklin County is less than 1%. However, KLPW AM/FM are listed as stations in the St. Louis, Missouri MSA, (albeit on the fringe of that MSA) whose minority population is approximately 14%. Other disparities in average income and industry between the MSA and Franklin County exist. Because of the low local minority population, and the differing community interests between St. Louis and Union, Missouri, (urban vs. rural/agricultural) it has been impossible for the stations to employ minority employees in anything like the parity required for compliance with the FCC's rules, despite the station's best efforts over the past license term to recruit minority employees from outside its local area. Where a station places no coverage over a major market with which it is associated, and where its local coverage area minority labor force statistics differ significantly from the labor force statistics in the associated urban area, the licensee should be permitted to choose the county minority labor force statistics as its benchmark for compliance, on the basis of certification as to the coverage area.

The Commission's current standards for use of such alternative data are too difficult to meet. Even where commuting between the two communities is not a problem it is often difficult to recruit minorities from a large urban area to a smaller fringe rural station. Prospective employees typically look for work where they live, and a distance of more than 25 miles is a deterrent. Also, potential employees look for the highest possible wage, and smaller rural stations cannot hope to compete with wages offered by urban stations. Furthermore, the quality of recruitment efforts in areas outside its coverage area required to show that the licensee's

efforts have, nevertheless been fruitless is highly burdensome, often requiring a significant amount of staff and/or management time needed to keep the station viable.<sup>1</sup> The Commission should simply define the relevant workforce data to be used as that area which is substantially covered by the Station's signal or signals.

4. *Compliance Should Not Be Required in areas with Minority Populations of Less than 5%*

The Commission should also consider whether the EEO paperwork burden is warranted at all in any area where the labor workforce statistics indicate a total minority population of 5% or less. Recruitment efforts among so small a minority population yield little result, even where recruitment efforts are extraordinary in nature. Altogether, the burden on the stations, and the additional burden on record keeping and scrutiny at renewal time at the Commission are simply not warranted by the small minority population involved. Stations in such areas should be exempt from compliance with the FCC's standards in the first instance.

5. *Responses to Renewal Challenges.*

Stations which are exempt from record keeping or compliance under the FCC's EEO rules should be sheltered from challenges at renewal time from all but actual charges of discrimination by former employees. Even if not sheltered from such challenges, such small stations and small market stations should be allowed to meet challenges with affidavits or certifications from management and staff at the station, or other persons with knowledge of whether the station has, or is likely to have discriminated during the past license term. Such certifications should be dispositive of any challenges in the absence of any specific complaint of actual past or ongoing discrimination.

6. *Alternative Ways to Comply With EEO Rules.*

(a) Training Programs. The purpose of the EEO Rules at the FCC are to encourage more minorities to participate in the communications industry. A station that sponsors minority

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<sup>1</sup>Informal advice received from the FCC's EEO staff regarding what sort of effort is required indicates that the Commission expects licensees to make herculean efforts: at a minimum, a Licensee should attempt to contact all possible minority referral sources in the major market, should contact national groups, should canvass colleges and universities statewide, should contact state and regional minority organizations and other personnel referral sources, should advertise job vacancies within a much wider area than that covered by the station, and must continually follow up on any and all non-productive contacts, and continually expand its efforts. Such efforts are unreasonable, where the station's coverage area does not include any area with substantial minority population. Moreover, that effort should not be required as a *prerequisite* for use of alternative labor force data, since it imposes even more stringent requirements than do ordinary recruitment compliance efforts.

training or internship programs often does not have the necessary vacancies to hire such individuals when the training or internship program is complete. However, such training and internship programs are invaluable in introducing minorities to the industry, even if the station does not hire such individuals, and these efforts should be recognized by allowing the licensee to claim graduates of such programs for purposes of meeting the FCC's benchmark standards for compliance.

(b) Centralized Job Referral Sources. Use of centralized job sources which meet the FCC's standards would be helpful where the centralized job source periodically reassesses its sources, and expands its recruitment sources for broadcasters' benefit. In that case, the self-evaluation and expansion of sources is already being performed by the central job source, and need not be duplicated by the licensee using that recruitment source if that source is the only referral source used by the Licensee. However, use of such a centralized job source should not take the place of other and more local contacts, where such contacts are available to the licensee, and if used as one of the station's referral sources, should not excuse the licensee's self-evaluation requirements as to its recruitment sources.

#### *Conclusion*

VBC believes that the EEO compliance burden should be relieved in the case of small market stations, small stations, and for stations in areas with low minority populations. Additionally, the relevant labor workforce standard to be used for compliance purposes should be consistent with a Station's market area as defined by its coverage signal or signals. Use of training programs and centralized referral sources should be allowed to supplement a station's compliance showing, as necessary.

These changes would alleviate the drain on small stations' administrative resources, and would promote the agency's administrative convenience and efficiency. These changes would not significantly alter a station's obligation to avoid discrimination, and to hire minorities and women. Nor would it induce any adverse change in such stations' current hiring practice. It would simply place the burden for affirmative recruitment obligations on larger stations and stations in larger markets with significant minority populations, which have the resources to succeed at such affirmative recruitment, and where such recruitment efforts are most likely to meet with success rather than with frustration.

Respectfully submitted,

***Virginia Broadcasting Corporation***

By: \_\_\_\_\_  
Richard E. Fister  
President

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